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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/859,682 | 05/18/2001 | Mark Ashby | 032005-097 | 3365 |

7590 07/17/2003
Robert E. Krebs
Thenlen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640

EXAMINER

IZAGUIRRE, ISMAEL

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3765

DATE MAILED: 07/17/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Office Action Summary

Application No.

09/859,682

Applicant(s)

ASHBY ET AL.

Examiner

Ismael Izaguirre

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45-77 is/are allowed.
- 6) ☒ Claim(s) 78-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>15</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The Examiner is appreciative of the changes made to the specification and claims. These have been duly noted and considered.

CLAIMS

Summary

Claims 45,65 and 78 are the independent claims under consideration in this Office Action.

Claims 46-64,66-77 and 79-82 are the dependent claims under consideration in this Office Action.

Claim Patentability

Concerning the Patentability of the claims, the following is submitted for Applicant's consideration:

Claim Rejections - 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 78-82 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kensey et al. (5,676,689).

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Kensey et al. teach a fluid handling tube (see figure 29, for example). Kensey et al. teach a tube 28 including a proximal end (at 28E) and a distal end (at 28C) and a lumen extending between the distal end and the proximal end. The tube includes an enlarged proximal end (at 28E) for assisting in the delivery of fluids therethrough and includes a larger diameter lumen for accommodating a device 28A which includes a tube 28D with a fluid stopcock 28E at its end. The tube 28 receives therein a control head 400 which has a distal end (figure 28 at 404) and a proximal end (at 406) inside the lumen (figure 29). The control head having a port 404 at its distal end for passing fluids therethrough. The lumen of 28 is long enough to where the distal port 404 of the control head is "covered" by the lumen such that no fluids will enter the port when the control head is retracted.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 78-81 are rejected under 35 U.S.C. 102(e) as being anticipated by Cragg et al. (6,162,192).

Cragg et al. teach a fluid handling tube 12. Cragg et al. teach the tube 12 as including a proximal end (at 42) and a distal end (at 46) and a lumen 36 extending between the distal end and

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the proximal end. The tube includes an enlarged proximal end 34 for assisting in the delivery of fluids therethrough and includes a larger diameter lumen for accommodating a pledget 40 and pusher. The tube 12 receives therein a control head 26 with has a distal end entering into the blood vessel 102 and a proximal end exiting beyond the tube 12.

Allowable Subject Matter

Claims 45-77 are allowable over the prior art of record.

Pertinent Citations

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ashby et al. illustrate a tube for accommodating a sponge having lumens of different diameters therein.

INQUIRIES

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Ismael Izaguirre located in CP2-4B18 whose telephone number is (703) 308-0892. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.


Ismael Izaguirre
Primary Examiner
Art Unit 3765